this particular case any evidence that the person doing the work could be overlooked and directed in regard to the manner of his doing the work. The Manager appears to have criticised the work when completed but never to have interfered while the work was being done.

The Manager does not appear to have had the right to dismiss any particular one of the sawyers. He had the right to terminate the services of all of them for bad work but not of any particular one. This appears to me to indicate a collective contract with a partnership and not individual personal contracts. It is also to be noted that the earnings were paid as a lump sum to Mr. Chan, not individually to each sawyer.

The facts of the case of *Vamplew & Ors.* v. *Parkgate Iron & Steel Company, Limited*[2] are somewhat similar to this. In that particular case a man was injured by an accident while doing work for manufacturers at their works. The question arose whether or not he was an independent contractor or their servant. Evidence was given by the deceased's brother of which the judge's note was as follows: "My brother worked there. He had a sub-contract. He worked breaking steel with a steel ball and breaking cinders with a stone, both of which belonged to the company. He was paid on tonnage of steel and cinders that he broke and cut. Part of his work was done in a place called 'the pits'. He would have occasion in the course of his work to go into 'the pits'. He had five men and two boys working under him." The County Court judge found that the deceased was an independent contractor. The judgment was upheld by the Court of Appeal. In delivering his judgment Sterling L.J. said: "I confess that I should have felt better satisfied, if there had been clearer evidence as to the exact nature of the relation between the deceased man and the respondents, but the burden lies on the appellants of shewing that the deceased man was a workman in the employment of the respondents within the meaning of the Act (i.e. Workmen's Compensation Act 1897)." In this particular case the sawyers have all stated that they are independent contractors. I do not consider that the prosecution has adduced sufficient facts to shew that the relationship between the Company and the sawyers was that of master and servant. I rely principally on the two facts, first that there was no general supervision, only apparently a right to reject bad work and secondly that there was no right to dismiss any individual sawyer.

I am not satisfied from the facts of this particular case that the sawyers were employed by the Company under a contract of service and therefore the appeal must be allowed, the conviction quashed, and the fine returned to the appellant.

Appeal allowed.

Solicitors: *Leong Yew Koh & Co.*

LEE AH HOONG v. HO SAY ENG

[A. C. J. (Ambrose J.) February 24, 1960]

[Singapore — District Court Appeal No. 45 of 1959]

Landlord and Tenant — Control of Rent Ordinance (Cap. 242), s.15(1)(a) and (2) — Contents of notice of demand under s.15(1)(a).

On true construction, section 15 (2) of the Control of Rent Ordinance does not require the notice of demand to state whether the person to whom the rent may be tendered is the landlord or not.

DISTRICT COURT APPEAL.

F. B. Oehlers for the appellant.

Respondent not represented.

Ambrose J.: The point for determination in this appeal was this: does section 15(2) of the Control of Rent Ordinance require the notice of demand under section 15(1)(a) to state whether the person to whom the rent lawfully due may be tendered by the tenant is the landlord or not? The learned District Judge held that it does. He further decided that the notice of demand in this action was not a proper demand as it did not comply with this requirement, and dismissed the claim for possession solely on that ground. Section 15(2) provides that for the purposes of section 15(1)(a):

> "a notice of demand shall give the name and address of the person, whether he is the landlord or not, to whom the rent lawfully due may be tendered by the tenant . . ."

In my opinion, the true construction of section 15(2) is this. It states that the notice of demand shall give the name and address of the person to whom the rent lawfully due may be tendered by the tenant. It provides that this requirement shall be complied with, whether the person to whom the rent may be tendered is the landlord or not. In my view, it does not require the notice of demand to state whether the person to whom the rent may be tendered is the landlord or not.

Apart from his opinion that the notice of demand was not a proper one, the District Judge considered it reasonable that an order for possession should be made in favour of the plaintiff. In the circumstances, I set aside his judgment and made an order requiring the defendant to give possession of the premises to the plaintiff on or before the 29th February, 1960.

Order accordingly.

Solicitors: *Oehlers & Co.*

PUBLIC PROSECUTOR v. KONG LING MEDICAL AID SERVICE & ANOR.

[A. Cr. J. (Smith J.) March 3, 1960]

[Ipoh — Criminal Appeal No. 67 of 1959]

Insurance — Securities with the Accountant-General — Default in depositing by company carrying on a life assurance business — Life Assurance Companies Ordinance, 1948, ss.4(1) and 28(1).

Contract — Policies of assurance upon human life — Prospectus and passbook — Whether prospectus mere advertisement puff.

In this case the second respondent is the sole proprietor of the business called "Kong Ling Medical Aid Service". He was charged, being a company carrying on a life assurance business, with failure to deposit securities with the Accountant-General, contrary to section 4(1) of the Life Assurance Companies Ordinance, 1948, punishable under section 28(1) of the Ordinance. He was acquitted and the prosecution appealed against such acquittal.

Held: so long as the respondent was holding himself out as undertaking liability under policies of assurance, even if he had not yet succeeded in entering into binding contracts, he was carrying on business in the same sense as a shopkeeper opening his shop for the first time is carrying on business before he makes his first sale.

The appeal against acquittal was allowed and a retrial ordered.

Case referred to:—

(1) *Carlill* v. *Carbolic Smoke Ball Co.* [1893] 1 Q.B. 256.

MAGISTRATE'S CRIMINAL APPEAL.

Abdul Hamid bin Omar (Federal Counsel) for the appellant.

S. P. Seenivasagam for the respondent.

Smith J.: This is an appeal by the Public Prosecutor against the acquittal of the respondent at the close of the prosecution case. The respondent was charged under section 4(1) of the Life Assurance Companies Ordinance, 1948, in that he being a company carrying on a life assurance business did make default in depositing securities with the Accountant-General, an offence punishable under section 28(1) of the Ordinance.

The facts adduced by the prosecution were that the respondent had approached several persons for subscriptions to the mutual aid section of a business called "Kong Ling Medical Aid Service" of which the respondent is the sole proprietor.

The services to be obtained on payment of the subscription were set out in a prospectus written in Chinese. When anybody became a subscriber to the service he was issued with a passbook in which was bound the prospectus. The important part of the prospectus is paragraph 3 of which I set out part —

"3. **Categories of Membership.**

There are three categories of members, namely —

(a) Those aged between 12 years and 50 years.
(b) Those aged between 51 years and 65 years.
(c) Those aged between 66 years and 80 years.

Category of Members	Entrance Fee	Procedure Fee	Monthly Subscription	Payment from Mutual Aid Fund
A	$10/-	$3/-	$4/-	$600/-
B	$ 7/-	$3/-	$3/-	$400/-
C	$ 5/-	$3/-	$2/-	$300/-

Nine months after the date of joining the organisation, members will be eligible to enjoy all the privileges. Payment from the Mutual Aid Fund as shown in the above chart will be made in full to beneficiaries of the deceased."

From this it is quite clear that if a member dies, provided subscriptions have been paid for nine months, then a payment varying from $300 to $600 will be paid to the beneficiaries of the deceased.

Evidence was given by three persons concerning subscriptions paid to the respondent as proprietor of the service. The evidence of Wong Heng Fei, P.W. 2, is typical. He said as follows: "I have bought a share of this service on behalf of my father-in-law Tang Kwee Sang in respect of death benefit. The yearly subscription is $2 and monthly subscription is $2. So far $14 have been paid by me as entered in Exhibit P. 1. The entrance fee was $3. Amount in policy was $300." He also said that he took out the policy on behalf of his father-in-law Tang Kwee Sang without his knowledge.

The appellant alleges that the respondent was carrying on life assurance business within the meaning of the Ordinance. Section 2 defines life assurance business as follows — "life assurance business means the issue of or the undertaking of liability under policies of assurance upon human life or the granting of annuities upon human life." A policy of assurance upon human life is also defined in the following terms — "policy of assurance upon human life means any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life."

The appellant argues that the prospectus issued to the persons who paid the subscriptions are policies within the meaning of section 2 of the Ordinance since by reading the passbook with the prospectus it is clear that the payment of money is assured on death.

The respondent argues that the passbooks did not form binding contracts of any kind whatsoever. It is alleged first of all that the prospectus is a mere form of advertising puff. With his argument I cannot agree and I think the case is fully covered by *Carlill* v. *Carbolic Smoke Ball Company*(1). The facts of this well-known case are as follows —

The defendants, the proprietors of a medical preparation called "The Carbolic Smoke Ball," issued an advertisement in which they offered to pay £100 to any person who contracted the influenza after having used one of their smoke balls in a specified manner and for a specified period. The plaintiff on the faith of the advertisement bought one of the balls, and used it in the manner and for the period specified, but nevertheless contracted the influenza.

It was held from these facts that there was a contract by the defendants to pay the plaintiff £100 in the event which had happened, and that such a contract was not a contract by way of wagering and that the plaintiff was entitled to recover.

There is a possible argument in this case that since the persons assured had never given their consent there was no binding contract between the respondent and the various assured persons. The law with regard to ratification by a principal is well settled and is conveniently set out in Chitty on Contracts, 20th Edition, at page 1110 in the following words —

"It is an established rule that an act done for another by a person not assuming to act for himself, but for such other person, though without any precedent authority whatever, becomes the act of the principal if subsequently ratified by him within a reasonable time; or, in other words, as an authority may be presumed from previous employment in similar acts, so the same presumption arises from subsequent assent and acquiescence — according to the maxim *omnis ratihabitio retrotrahitur et mandato priori aequiparatur*. An unauthorised acceptance of an offer may be ratified even after the offer has been withdrawn."

In my view the position is that the contract must be presumed to be ratified by the principal until the contrary is shewn. It may be possible to shew that there is no contract by the respondent calling the various assured persons as his witnesses and securing their admission that they repudiate the contract that had been entered into on their behalf by the various prosecution witnesses. I think the position is that the contract is to be deemed binding until repudiated by the assured.

Even if I am wrong in taking this point of view, I am quite satisfied that the respondent was holding himself out as undertaking liability under policies of assurance even if he had not yet succeeded in entering into any binding contracts. He was certainly carrying on business in the same sense as a shopkeeper opening his shop for the first time is carrying on business before he makes his first sale. In my opinion, as soon as representations are made to the general public that a person is prepared to do business of a certain type then it can be said that that man is carrying on that business even though he may as yet have had no clients. I am satisfied that the passbooks read with the prospectus created binding policies of assurance upon human life. I therefore allow the appeal and order that the matter be remitted to another Magistrate for trial.

Appeal allowed.

Solicitors: *S. Seenivasagam & Sons.*

HONG GUAN & CO. LTD. v. R. JUMABHOY & SONS LTD.

[J. C. (Lord Tucker, Lord Jenkins and Lord Morris of Borth-Y-Gest) April 4, 1960]

[Privy Council Appeal No. 18 of 1958]

Contract — Sale of goods — Shortage of supply — Non-delivery of goods — Whether valid excuse — Exceptions clause — "Subject to force majeure and shipment" — Construction — Liability of sellers — Measure of damages.

Privy Council — Jurisdiction — Point of law not taken below — Alternative submission on construction of contract — Point could not be met by further evidence.

The appellants entered into a contract with the respondents for the sale of 50 tons of Zanzibar cloves, of which the respondents were importers and stockists. By an exceptions clause it was provided that the contract was "subject to *force majeure* and shipment". The respondents, at about the same time, also entered into contracts to sell to various buyers various quantities of cloves. Due to shortage of supply as a result of insufficient quantity of cloves being shipped by the Zanzibar suppliers, the respondents could not carry out all their commitments and wrote to the appellants terminating their contract. The appellants had, however, in the meantime made two contracts for the resale of the cloves. Since the appellants did not receive any cloves from the respondents they were unable to fulfil their contracts of resale. They agreed, however, to pay compensation totalling $43,000. In action for damages for breach of contract brought by the appellants against the respondents the trial Judge held that the respondents were protected from liability by the exceptions clause, and that the quantity of cloves in fact shipped by the respondents were in fulfilment of definite contracts which had been entered into by the respondents and which were subject to no condition as to shipment. He accordingly held that the respondents were under no obligation to supply the cloves to the appellants. The Court of Appeal, by a majority, affirmed the decision of the learned trial Judge. On further appeal to the Privy Council,

Held: the exceptions clause "subject to *force majeure* and shipment" must be construed as meaning that the contract was (a) conditional upon the sellers not being prevented by circumstances amounting to *force majeure* from carrying it out and (b) conditional upon the sellers being able to procure the shipment of cloves to the quantity and of the description referred to in the contract. The words "subject to shipment" in this contract could not be construed as making the contract conditional on the respondents choosing to ship the cloves and thinking fit to allocate them to this particular contract; nor could they be construed as enabling the respondents to excuse their failure to deliver by reference to their other commitments.

Cases referred to:—

(1) *Hollis Bros. & Co. Ltd.* v. *White Sea Timber Trust Ltd.*, [1936] 3 All E.R. 895.
(2) *Star Public Saw Mill Co.* v. *Robert Bruce & Co. Ltd.*, 17 Ll. L.R. 7.
(3) *Gray* v. *Slater, Birds & Co.*, 19 Ll. L.R. 59.
(4) *Kokusai Kisen Kabushiki Kaisha* v. *Johnson*, 8 Ll. L.R. 434.
(5) *Tennants (Lancashire) Ltd.* v. *C. S. Wilson & Co. Ltd.*, [1917] A.C. 495.
(6) *Pool Shipping Co. Ltd.* v. *London Coal Co. of Gibraltar Ltd.*, [1939] 2 All E.R. 432.

The following cases, in addition to those referred to in the judgment, were cited in argument: *Barnett* v. *Javeri & Co.* [1916] 2 K.B. 390; *Lebeaupin* v. *Richard Crispin & Co.* [1920] 2 K.B. 714; 36 T.L.R. 739; *Charles H. Windschuegl Ltd.* v. *Alexander Pickering & Co. Ltd.* (1950) 84 Ll.L. 89; *Brauer & Co. (Great Britain) Ltd.* v. *James Clark (Brush Materials) Ltd.* [1952] W.N. 422; [1952] 2 T.L.R. 349; [1952] 2 All E.R. 497; *Dampskibsselskabet Danmark* v. *Poulsen & Co.* [1913] S.C. 1043; *Millett* v. *Van Heek & Co.* [1921] 2 K.B. 369; 37 T.L.R. 411, C.A.; *North Staffordshire Railway Co.* v. *Edge* [1920] A.C. 254; 36 T.L.R. 115, H.L.; *Wilson* v. *United Counties Bank Ltd.* [1920] A.C. 102, H.L.; *Perkowski* v. *Wellington Corporation* [1959] A.C. 53; [1958] 3 W.L.R. 564; [1958] 3 All E.R. 368; *Connecticut Fire Insurance Co.* v. *Kavanagh* [1892] A.C. 473, 480; 8 T.L.R. 752, P.C.; *Gath* v. *Lees* (1865) 3 H. & C. 558; *Borrowman, Phillips & Co.* v. *Free & Hollis* (1878) L.R. 4 Q.B.D. 500; *Johnson* v. *Macdonald* (1842) 9 M. & W. 600; *Lovatt* v. *Hamilton* (1839) 5 M. & W. 639; *The Arpad* [1934] P. 189; 50 T.L.R. 505, C.A.; *Fox* v. *Star Newspaper Co.* [1898] 1 Q.B. 636; 14 T.L.R. 280; *Graham and Scott (Southgate) Ltd.* v. *Oxlade* [1950] 2 K.B. 257; 66 T.L.R. (Pt. 1) 808; [1950] 1 All E.R. 856, C.A.; *Marks* v. *Board* (1930) 46 T.L.R. 424; *Reardon Smith Line Ltd.* v. *Ministry of Agriculture, Fisheries and Food* [1959] 3 W.L.R. 665; [1959] 3 All E.R. 434; *Hale* v. *Rawson* (1858) 4 C.B.N.S. 85.